

Cecil told him that he was going to have to write him up for being late the week prior because he had to write me up and he didn't want to look like he was picking on me." Defendants aver that Don Peltz's statement is hearsay because the content of the alleged statement does not concern a matter within the scope of any agency relationship with GUBMK.

Plaintiff admits that Don Peltz's statement to him may not be admissible under F.R.E. 802. However, on the day he was laid off, plaintiff relayed the statement to Joey Hunt, the project superintendent, who admitted telling McCarty to write up Peltz too, because after the incident of the racial remark, "if everyone wanted to go by the rules, we'd go by the rules." Accordingly, Peltz's alleged statement will be stricken from Love's affidavit, but defendant's objection to Hunt's statement will be overruled, as Hunt was a supervisor of defendant and his statements are deemed admissions by the employer GUBMK.

3. Next, defendant objects to the unverified transcriptions of taped conversations plaintiff had with GUBMK employees. Plaintiff responds that he has now had the tapes transcribed by Barbara Maples of Brown & Wingo Court Reporting, and has submitted the certified transcription in response to defendant's motion for summary judgment. Therefore, defendant's objection will be overruled.

Accordingly, defendant's motion to strike [Doc. 32] is **GRANTED IN PART AND DENIED IN PART** as set out above.

ENTER:

s/ Thomas W. Phillips
United States District Judge